

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3678 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

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BABUBHAI N GAVIT

Versus

STATE OF GUJARAT

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Appearance:

MR PV HATHI for Petitioner  
MR DA BAMBHANIA for Respondent No. 1  
MR LR PUJARI for Respondent No. 2

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 29/09/97

ORAL JUDGEMENT

Rule. Heard learned Counsels for the parties.

2. The Gujarat Public Service Commission (hereinafter referred to as the Commission) issued an advertisement dt. 2.3.1996 inviting applications for one post reserved for scheduled caste of Personal Assistant

(non-technical) to Chief Town Planner, GSS Class II Post. The essential qualification provided is that the candidate must be graduate and secondly about five years experience in any responsible post in an administrative capacity. The petitioner applied for the same. The petitioner was interviewed along with three other candidates and secured first rank in the merit list and his name was recommended for appointment to the Urban Development and Urban Housing Department at Gandhinagar under a communication dt. 30.11.1996. However, the petitioner received a letter dt. 10.3.1997 informing him that under the Recruitment Rules five years experience in any responsible post is one of the requisite qualifications and on verification it was found that the petitioner was not having five years experience. It was pointed out that the petitioner graduated in the year 1994 and prior to that he was having an experience of two years and three months. A certificate in that regard was produced which indicated that the petitioner worked in administrative capacity for the period from 1.5.1987 to 12.7.1989 and from 10.4.1992 to 20.7.1992. It is not in dispute that the petitioner has experience of three years and 11 months after graduation.

3. The question which arises for consideration is as to whether the experience prior to graduation can be taken into consideration for computing the five years requisite experience or not. Learned Counsel Mr.Hathi appearing for the petitioner relying on the decision of the Punjab & Haryana High Court in the case of SHRI SAHIG RAM KUMAR v. SECRETARY, HARYANA STATE PUBLIC SERVICE COMMISSION reported at 1973 (1) SLR 1039 submits that the experience gained prior to graduation can be computed for the requirement of requisite experience. On the other hand, the learned Counsel appearing for the respondent submits that one of the essential qualifications for recruitment is graduation and therefore it is only the experience gained after graduation which can be taken into account.

4. Having considered the rival contentions, I am unable to agree with the view of the Commission. A reading of the advertisement clearly indicates that the requisite qualifications are in two parts. The requirement of first part is graduation. In the second part, the requirement is experience of about five years. There is nothing to indicate that the experience prior to graduation has been prohibited. In absence of such a prohibition, the experience gained prior to graduation must be considered. Thus, in my view, the respondents have committed error in not considering the experience of

the petitioner prior to graduation. It is not in dispute that, if the said experience is taken into account, the petitioner fulfills the qualification.

5. In view of the aforesaid, this Special Civil Application is allowed. The letter dated 23.4.1997 issued by the Commission is quashed and set aside and respondent No.1 is directed to consider the original recommendation of the Commission for appointment of the petitioner on the post of Personal Assistant (Non-technical) to Chief Town Planner, GSS Class II on the basis of the selection order made by the Commission and as conveyed under communication dt. 30.11.1996. Rule is made absolute.

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